

Before the  
Federal Communications Commission  
Washington, D.C. 20554

ORIGINAL

In the Matter of )  
Annual Assessment of the Status of Competition )  
in Markets for the Delivery of Video Programming )

CS Docket 99-230  
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To: The Commission

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## **SUMMARY**

The record in this proceeding confirms Comcast's experience that the pace of competition in the video distribution marketplace is accelerating rapidly. The Commission's pro-competitive policies have achieved their purposes. Competition is thriving and effectively addressing the market power which cable operators once possessed. This lack of market power is reflected by a continuing decline in cable's share of multichannel video customers.

Comcast faces competitive challenges in each of its service areas from a variety of multichannel video programming distributors, including direct broadcast satellite, direct-to-home satellite, satellite master antenna television, multipoint multichannel distribution service, open video systems, and other facilities-based cable television operators. Each of these competitors challenge Comcast in terms of both services and price. Moreover, many of these competitors are affiliated with telephone local exchange carriers, electric utilities, and other well financed corporate interests including global manufacturing powers. The DBS industry has strengthened considerably as a source of competition during the past year, which is manifested most clearly by its consolidation into two major players whose already significant market position is increasing steadily. DBS competitors offer consumers in all of Comcast's service areas a range of products and services in addition to a wide variety of digital video programming services. Moreover, with the expected amendment of the Satellite Home Viewer Act to permit DBS retransmission of local broadcast signals, there will be no question that DBS is a fully substitutable service providing effective competition to cable operators nationwide.

Comcast's various competitors also continue to form strategic alliances to market bundled telephone, interactive, and Internet services together with video programming services. These developments have changed the face of the multichannel video market, and increasingly drive competition and choice in the broadband marketplace as well. As a result, the touchstone of competition has become the availability of new services and an explosion of customer choice from competing MVPDs and from new broadband services from cable MSOs such as Comcast. Competition in the video marketplace cannot be measured meaningfully by focusing exclusively on the price of existing video services.

Comcast has responded to these competitive forces by: (1) investing heavily and broadly in cable system upgrades to increase channel capacity rapidly and to maintain parity with its competitors; (2) offering new services, including digital cable, high-speed cable Internet, and telephony, to provide customers with maximum choice in response to the high-capacity and bundled offerings of its competitors; (3) restraining retail prices despite spiraling programming and significant upgrade costs; (4) increasing efficiency and reducing operating costs by clustering systems into dense geographic regions; (5) offering subscribers greater choices in programming and pricing by creating low-cost basic service and cable programming service tiers while also providing additional programming service packages; and (6) distinguishing itself from its competitors by strengthening its roots in the local communities it serves and providing, among other things, free cable services and high-speed cable modems to schools and libraries. Comcast's competitive responses to the new multichannel video and broadband service providers have benefited consumers, who now enjoy a greater choice of programming, additional services, and advanced technologies at competitive rates. This result is consistent with the policies that have been advanced by both Congress and the Commission.

Consolidation in the cable industry parallels that of many industries as businesses attempt to maximize efficiencies of both scale and scope in response to dynamic economic and competitive conditions. Comcast has responded to the reality of competition in the video marketplace by becoming a stronger and more efficient presence in the markets it serves. For Comcast, the vehicle for achieving this goal has been the formation of dense regional clusters. Clustering enables Comcast to respond to competitive pressures, increased programming costs, and large capital outlays for system upgrades and new technologies by reducing operating expenses and making more efficient uses of its network. Thus, clustering is a pro-competitive response to dynamic market conditions and new market entrants, and the fruit of this process has been increasingly abundant for multichannel video customers during the past year. The fundamental economic difference between the cable industry and other related industries lies in the fact that the input costs of providing cable television service (*i.e.*, programming and network upgrades) continue to increase dramatically. Meanwhile, input costs for other industries, such as

the telephone industry, decline steadily over time.

Contrary to the comments submitted by some of Comcast's competitors, the Commission has correctly interpreted and applied the program access provisions of the 1992 Cable Act. Some commenters allege that Comcast has deliberately evaded the Commission's rules and the Communications Act by migrating programming from satellite to terrestrial delivery. These allegations are factually inaccurate, legally unsound, and irresponsible, and the Commission has repeatedly rejected them. As the explosive growth of competition conclusively demonstrates, the Commission's policies have been effective in implementing the pro-competitive goals embodied in the 1992 Cable Act and the 1996 Telecommunications Act. There is no factual or legal basis to extend the program access regulations to non-affiliated programmers or to the terrestrial delivery of programming, which Congress deliberately excluded from the program access provisions of the 1992 Cable Act. Similarly, the Commission's cable television inside wiring rules have already been extended to the limits of congressional intent and are in no need of revision.

The Commission should acknowledge in its next report to Congress that vigorous competition has emerged in the multichannel video market and that factors other than price (*e.g.*, greater programming choice and additional services, and improvements in channel capacity, signal quality, and customer service) have become the bellwether of competition. The record in this proceeding leads inexorably to the conclusion that the Commission should stay the pro-competitive course which it has charted and that no additional legislative action is needed or warranted. Indeed, the imposition of additional regulations or laws aimed at providing advantages to the cable industry's competitors would simply deny consumers the benefits of an open market for the delivery of video programming and other services.

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To: The Commission

**REPLY COMMENTS OF COMCAST CORPORATION**

Comcast Corporation ("Comcast"), by its attorneys, hereby submits this Reply to Comments filed pursuant to the Commission's Notice of Inquiry in the above-captioned proceeding (FCC 99-148, released June 23, 1999).

**INTRODUCTION AND BACKGROUND**

Comcast Corporation, a Fortune 500 company with more than 17,000 employees nationwide, is principally engaged in the development, management, and operation of broadband cable systems and the provision of programming content. Since its founding in 1963 with only 1,200 Tupelo, Mississippi cable television customers, Comcast has grown to become the nation's fourth largest cable multiple system operator ("MSO"), currently serving 6.5 million customers. In the twenty-six states where Comcast operates,<sup>1</sup> it competes against a variety of other multichannel video programming distributors ("MVPDs"), including direct broadcast satellite ("DBS"), direct to home satellite ("DTH"), satellite master antenna television ("SMATV"), multipoint multichannel distribution service ("MMDS"), open video systems ("OVS"), and other facilities-based cable television operators ("overbuilders").

The accelerating growth of competition in video markets has spurred Comcast toward greater efficiencies and further cable system "clustering," increased investment, and greater

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<sup>1</sup> Connecticut, New Jersey, Pennsylvania, Ohio, Indiana, Illinois, Michigan, Wisconsin, Kentucky, West Virginia, Virginia, Maryland, Delaware, Missouri, Kansas, Arkansas, Tennessee, Mississippi, Alabama, Georgia, South Carolina, Florida, Colorado, New Mexico, Arizona, and California.

consumer choices in video programming and other new services. As a result, Comcast has become an industry leader in the deployment of advanced digital cable and high-speed cable Internet services. Comcast's multi-billion dollar fiber-optic upgrade projects in systems around the country has made possible Comcast Digital Cable Service, which provides over 170 channels of programming and, as of August 1999, served approximately 285,000 customers. Comcast expects to serve 400,000-450,000 digital cable customers by the end of 1999, and Comcast Digital Cable is now available to sixty percent of Comcast's customers. Similarly, Comcast@Home provides high-speed cable Internet services to more than 100,000 customers, and Comcast expects to serve more than 130,000 high-speed cable customers by the end of this year. Comcast's high-speed cable Internet services are now available to more than 2.4 million households or 43.6% of Comcast's customers. Comcast also is an acknowledged leader in the provision of free high-speed cable Internet services to schools and libraries. This past June, Comcast celebrated the installation of its free high-speed cable Internet service via Comcast@Home to five hundred K-12 schools and fifty public libraries nationwide. Excluding the recently acquired Jones Intercable, Inc. systems, Comcast now provides free high-speed cable Internet service to 630 public and private K-12 schools and to sixty public libraries.

The bulk of Comcast's cable systems are comprised of large, technologically advanced systems which are clustered principally in six urban and suburban areas in the Mid-Atlantic region, Southeast Michigan, West Florida, East Tennessee, Indianapolis, Indiana, and New Mexico. Last year, eighty percent of Comcast's customers were located in ten clusters serving more than 100,000 customers each. This year, eighty-four percent of Comcast's customers are located in six geographic clusters, each of which serves more than 200,000 customers. Clustering enables Comcast to more efficiently use its resources to provide higher quality video programming and improved customer service while maintaining reasonable and competitive prices. Several acquisitions over the past year have enabled Comcast to create the nation's largest contiguous cable system cluster of more than four million customers in the Mid-Atlantic region. Comcast's Mid-Atlantic super cluster ranges from the metropolitan Washington, D.C.

area, through Baltimore into Delaware and Philadelphia, and reaches into northern New Jersey. Additionally, Comcast provides wired local exchange service in Florida, northern Virginia, and Maryland, and, through Comcast Telecommunications, Inc. d/b/a Comcast Long Distance, provides interexchange telecommunications services to business and residential customers in more than one dozen states.

Comcast also provides video programming through its majority ownership of QVC, Inc., its controlling interest in E! Entertainment Television, Inc., and through other programming investments, including The Golf Channel, Speedvision Network, Outdoor Life Network, Music Choice, and Lightspan Partnership, Inc., a programming service bringing schools and homes interactive television curriculum programming. Through its Comcast SportsNet and CN8 operations, Comcast has become an innovator in regional and local news, sports, and public affairs programming.

Comcast's business plan and the events of the past year have been driven by significant competition. As the record compiled in this proceeding demonstrates, Comcast's competitors, including DBS, OVS, and overbuilders, continue to grow at a record pace. This growth provides incontestable evidence that the pro-competitive policies adopted by Congress and implemented by the Commission have taken root and that a competitive market for the delivery of video programming is flourishing. In response, Comcast has created, developed, and launched new products and services which are redefining the relationship with its customers. This has transformed Comcast from a one-way video distributor into an interactive broadband and digital company offering a broad array of video, high-speed Internet, telephony, and (most importantly) choices.

Comcast has undertaken strategic transactions to improve efficiency and has invested heavily in system upgrades and new service offerings. Already, more than eighty-three percent of Comcast's customers are served by systems operating at 550 MHz or greater, and more than sixty percent are served by systems operating at 750 MHz or greater. We estimate that by year-end, more than eighty-five percent of our customers will be receiving service at greater than 550

MHz and more than sixty-three percent will be receiving service at 750 MHz. The presence of competition also has led Comcast to hold the line on price adjustments, despite double-digit increases in programming costs and a more than two billion dollar investment in system upgrades. Comcast also has restructured its cable service offerings by creating a low-priced basic tier and by offering its subscribers three or more additional levels of programming services, including digital cable and high-speed cable Internet service. Comcast's customers consequently are enjoying greater choice in video programming and other services at competitive prices.

In the last year, Comcast has undertaken a variety of transactions and strategies aimed at building larger system clusters and creating increased investment, new markets and services, and additional programming choices for subscribers. Last December, Comcast formed a strategic relationship with Prime Communications, LLC, which serves customers in Montgomery County and Gaithersburg, Maryland; Arlington County, Virginia; and portions of the City of Chicago. Comcast also acquired Greater Philadelphia Cablevision, Inc., a subsidiary of Greater Media, Inc. that operates a cable system serving approximately 79,000 customers in Comcast's corporate hometown, the City of Philadelphia.

This past April, Comcast completed its acquisition of a controlling interest in Jones Intercable, Inc. ("Jones"), which serves approximately one million cable customers in eleven states,<sup>2</sup> and last month announced its intention to double its equity interest in Jones.<sup>3</sup> And, in May, Comcast and AT&T reached an agreement by which Comcast will gain an additional 750,000 customers through system swaps. Under the AT&T agreement, Comcast also received an option to purchase, over the next three years, additional cable systems serving approximately 1.25 million customers, including the Washington, D.C. cable system. Upon completion of all pending transactions, Comcast will emerge as the nation's third-largest cable MSO with eight

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<sup>2</sup> Maryland, Virginia, South Carolina, Georgia, Florida, Wisconsin, Missouri, Kansas, New Mexico, Arizona, and California.

<sup>3</sup> Press Release, *Comcast Corporation Announces Partial Exchange Offer for Jones InterCable, Inc.*, August 9, 1999 (available at <http://www.comcast.com/about/presscenter/pr0800999c.htm>).

million owned or managed cable customers.<sup>4</sup>

To focus on competition in its core cable and content operations, Comcast announced in January 1999 that it had reached an agreement to sell its wholly owned subsidiary, Comcast Cellular Corporation, to SBC Communications. Comcast also formed Comcast Interactive Capital Group, a new independent unit that functions as a venture capital fund to seek out, acquire, and manage investments associated with the Internet.

The record compiled in this proceeding unequivocally demonstrates that the current statutory and regulatory environment has succeeded in igniting competition in the market for the delivery of video programming. Cable television continues to lose overall market share while both satellite and terrestrial competitors continue to post record increases month after month. Comcast faces real competition in its core video business from two major satellite providers in all of its markets. Moreover, in a growing percentage of the areas it serves, Comcast is also experiencing competition in its video, Internet, and telephone businesses from terrestrial providers. Comcast has responded to this competition by increasing channel capacity and services, improving signal quality and customer service, while restraining prices despite growing programming and infrastructure expenses.

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<sup>4</sup> Even after these transactions are completed, Comcast probably will still serve fewer customers its largest DBS competitor, DirecTV, which has more than 7.4 million subscribers and which expects its record growth to continue.

## DISCUSSION

### I. THE LEVEL OF COMPETITION IN THE VIDEO MARKETPLACE CONTINUES TO ACCELERATE.

The record in this proceeding confirms Comcast's experience that the rate of competition in the video distribution marketplace is not simply growing but is accelerating.<sup>5</sup> Cable's share of the MVPD market continues to decline significantly.<sup>6</sup> Comcast faces competitive challenges from a variety of MVPDs in each of its service areas. The consolidation of the DBS industry into two major players, whose market position is increasing steadily and who offer consumers a wide variety of products and services in addition to video service, has particularly shaped Comcast's competitive response. Comcast's competitive responses to the new MVPD and broadband markets have benefited consumers, who now enjoy greater choices of programming, additional services, and more advanced technologies at competitive prices.

#### A. The Strong Growth Of DBS Competition Is Accelerating, And DBS Competitors Continue To Achieve Record Growth Month After Month.

In last year's Report (the "*Fifth Annual Report*"),<sup>7</sup> the Commission observed that "DBS subscribership continues to show strong growth" and noted that DBS providers added 2.2 million subscribers between June 1997 and June 1998 (a 44% annual increase) for a total of 7.2 million

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<sup>5</sup> Satellite Broadcasting and Communications Association, Comments in CS Docket No. 99-230, at 5-6 (filed August 9, 1999) ("*SBCA Comments*") (The DBS rate of subscriber acquisition "has been occurring at increasing velocity . . . with net acquisition figures outstripping those of previous years" and is becoming more consistent and less seasonal than in previous years.)

<sup>6</sup> National Cable Television Association, Comments in CS Docket No. 99-230 (filed August 6, 1999) ("*NCTA Comments*") (Cable's market share is down an additional three percent from last year, to approximately 82.2%, and competitive MVPDs now capture more than seventy percent of new subscribers, which has eliminated the ability of cable operators to exercise market power despite their historically-based high market share.) *Id.* at 5-10 and attached Report prepared by Economists, Inc.

<sup>7</sup> Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, *Fifth Annual Report*, 13 FCC Rcd 24284 (1998) ("*Fifth Annual Report*").

subscribers as of June 1998.<sup>8</sup> The results during the past year are even more dramatic and demonstrate that effective competition in the multichannel video market is thriving. In addition, with the anticipated amendment of the Satellite Home Viewer Act ("SHVA") to permit DBS retransmission of local broadcast signals,<sup>9</sup> there will be no question that DBS is a fully substitutable service providing effective competition to cable operators nationwide.

As of June 1999, 11.86 million households subscribed to satellite MVPDs (an increase of 4.66 million for the year) and DBS providers added 7,737 *daily* between June 1998 and June 1999, with more recent data reflecting daily sales of 8,333.<sup>10</sup> Satellite providers today serve approximately twelve percent of total television households nationwide,<sup>11</sup> and at current growth rates will soon exceed the statutory fifteen percent effective competition threshold.<sup>12</sup> Moreover, in its comments, SBCA states that it anticipates DBS subscribers will increase by an additional three million in 1999,<sup>13</sup> thereby substantially exceeding the growth rate of the cable industry.

Both of the major DBS providers, DirecTV and Echostar, have reported month after month of record subscriber growth in "their growing assault on the cable industry[.]" with Echostar reporting its ninth consecutive month of 100,000-plus subscriber gains and DirecTV reporting its fourth consecutive 100,000-plus month.<sup>14</sup> Echostar Communications' Dish Network reported adding 770,000 net subscribers in the first seven months of 1999 (an 86% increase over the same period last year) and 113,000 customers in July 1999 alone (a 55% increase over the

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<sup>8</sup> *Fifth Annual Report*, 13 FCC Rcd 24284 at para. 62.

<sup>9</sup> *See, e.g.*, The Copyright Compulsory License Improvement Act, H.R. 1027, 106th Cong. (1999).

<sup>10</sup> *SBCA Comments* at 7-8.

<sup>11</sup> *Id.* at 8 (Forty states now have DTH penetration of more than ten percent, ten states have over twenty percent penetration, and two states, Montana and Vermont, have over thirty percent DTH penetration). In Texas alone, 1,100,000 households subscribed to satellite television services as of June 1999. COMMUNICATIONS DAILY, August 25, 1999 at 9.

<sup>12</sup> *See* 47 U.S.C. § 543(l).

<sup>13</sup> *SBCA Comments* at 8.

<sup>14</sup> Alan Breznick, *DBS Providers Unveil Plans to Challenge Cable*, CABLE WORLD, July 26, 1999 at 10.

73,000 added in July 1998).<sup>15</sup> Excluding subscribers acquired from its acquisition of Primestar, DirecTV added 791,000 customers in the first seven months of 1999 (a 48% increase over the same period last year) and 122,000 subscribers in July 1999 (a 51% increase over July 1998).<sup>16</sup>

It is significant that satellite television systems and services are now more widely attainable than ever before. During the past year, the cost of a DBS system (including installation) declined approximately forty percent, from \$429 to \$260, and the median household income for new DBS subscribers decreased from \$48,360 last year to \$44,600 this year (a single year decline of approximately eight percent).<sup>17</sup> Today, more than sixty percent of new DBS subscribers live in areas passed by cable and seventeen percent subscribe to both DBS and cable. Current industry projections indicate that DBS will have 11 million subscribers by the end of 1999 and 16.5 million by 2003.<sup>18</sup>

In some states served by Comcast, DBS growth exceeded the 38.6% national annual growth rate for DBS in the 1998-99 period.<sup>19</sup> According to data published by SkyTRENDS,<sup>20</sup> DBS subscribership in New Jersey increased 37.55% in just the nine months from August 1998 to April 1999<sup>21</sup> — a 49.94% annual rate. In Michigan, where Comcast also faces significant overbuild competition from Ameritech, DTH penetration alone reached 13.23% through April

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<sup>15</sup> Press Release, *Dish Network Continues Record Customer Growth*, August 9, 1999 (available at <http://www.dishtv.com/profile/press/press/press217.htm>). Indeed, “[a]s many as 9 million consumers may purchase new home-satellite systems next year.”

<sup>16</sup> News Release, *DirecTV Announces Record July Customer Growth*, August 5, 1999 (available at <http://www.directv.com/press/pressdel/0,1112,210,00.html>). Joe Estrella, *9M Could Buy DBS in 2000*, MULTICHANNEL NEWS, July 26, 1999 (citing a study conducted by The Yankee Group for the SBCA).

<sup>17</sup> COMMUNICATIONS DAILY, August 3, 1999 at 10.

<sup>18</sup> *Id.*

<sup>19</sup> *SBCA Comments* at 7.

<sup>20</sup> SkyTRENDS is the research and data collection program of Media Business Corp. and the SBCA.

<sup>21</sup> *Compare* SkyREPORT, Vol. 5, No. 8, at 6-7 (Aug. 1998) to Vol. 6, No. 4 (Apr. 1999).

1999<sup>22</sup> and will exceed fourteen percent penetration by the end of August at current growth rates. Moreover, DBS is only one of Comcast's MVPD competitors in an increasingly crowded market. Comcast also competes with LEC- or electric utility-affiliated overbuilders such as Ameritech, MMDS providers, and OVS operators such as RCN.

**(1) DBS Competes With Cable On The Basis Of Both Services And Price.**

Prior to Comcast's initiation of nationwide system upgrades, the majority of its cable systems offered consumers an average of between fifty-five and sixty analog television channels, a substantial portion of which were reserved for "must-carry" broadcast stations, leased access programmers, and public, educational, and governmental ("PEG") users pursuant to federal regulation and the requirements of local franchise agreements. In contrast, Comcast's DBS competitors, using digital technologies that were not available when Comcast originally constructed its cable systems, were able to provide significantly larger channel capacities. Moreover, DBS providers, unencumbered by franchise agreements and their attendant obligations and costs, such as franchise fees, must-carry, leased access, PEG, and other obligations, were able to offer a wider variety of the programming most sought after by consumers at highly competitive prices.

For example, DirecTV and Echostar, respectively, currently offer a total of 211 and 193 digitally delivered channels.<sup>23</sup> These channel capacities exceed those of even the most advanced analog cable systems, and, because they are delivered digitally, can provide customers with enhanced picture and sound quality. In response to this competitive challenge in its service areas and in order to remain competitive, Comcast undertook the massive investments necessary to upgrade its systems, increase channel capacity, and offer new services.<sup>24</sup> Consequently,

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<sup>22</sup> See SkyREPORT, Vol. 6, No.4 (Apr. 1999).

<sup>23</sup> See DirecTV Service Overview (available at <http://www.directv.com/overview/overviewtablepages/0,1118,132,00.html>).

<sup>24</sup> Evie Haskell, managing director of SkyTRENDS, has observed that cable operators take the competitive threat from DBS seriously and are aware that "they have to upgrade to 750 MHz in order to compete." Monica Hogan, *DBS Above 10M*, MULTICHANNEL NEWS, July 19, 1999.

Comcast's Digital Cable Service is now available to sixty percent of its customers and provides more than 170 channels of programming.

Given the development of an increasingly competitive environment, both Comcast and its DBS competitors are aware that future competition will hinge upon the delivery of advanced services that will provide a maximum degree of choice to consumers.<sup>25</sup> Indeed, Echostar, which recently announced it will launch a satellite imminently that will increase its channel capacity by 150 channels and will enable it to offer consumers a 500-channel television system, is already advertising a 500-channel service.<sup>26</sup> This increasing competitive pressure naturally generates stronger incentives for Comcast and other MSOs to compete by aggressively upgrading their systems and by offering new and enhanced services to their customers.

DBS providers are also competing vigorously in terms of price. Both DirecTV and Echostar offer a competitive forty-channel basic service package for only \$19.99 per month. DirecTV also offers a ninety-five-channel expanded basic service package for just \$29.99, while Echostar offers a one hundred-channel expanded basic package for \$28.99.<sup>27</sup> Faced with nationwide competition from two substantial companies, Comcast has maintained cable prices below the Commission's prescribed regulated benchmarks while providing customers with greater choices in programming service packages. In addition to restraining its retail prices

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<sup>25</sup> See DirecTV, Inc, Comments in CS Docket No.99-230, at 17-19 (filed August 6,1999) ("*DirecTV Comments*") (DirecTV continues to deploy advanced technologies, including Dolby Digital 5.1-channel sound with MPEG-encoded audio, HDTV Broadcasts, Integrated ATSC/DIRECTV set-top boxes and televisions, Interactive services (through strategic alliances with WINK Enhanced Broadcasting and AOL), Digital Video Recording (through a partnership with TiVo), and Triple feed antennas and receivers). *Id.* at 9-10 (observing that to compete successfully with cable operators who have begun to aggressively upgrade their systems and market advanced broadband capabilities, DirecTV must further expand its system because it has reached the limits of digital compression on its existing satellites, and urging the Commission to grant its applications to launch six additional satellites).

<sup>26</sup> Press Release, *Dish Network Unveils 500 Channel Satellite TV System*, July 19, 1999 (available at <http://www.dishtv.com/profile/press/press/press212.htm>).

<sup>27</sup> See <http://www.directv.com/programming/programmingpages/0,1093,135,00.html>; [www.dishtv.com/programming/packages/index.html](http://www.dishtv.com/programming/packages/index.html).

despite large increases in programming costs and huge investments in system upgrades, Comcast also offers more choice and value through low-priced basic ("BST") and cable programming service tiers ("CPST"), as well as additional options including multiple basic programming tiers and new services such as Comcast's Digital Cable Service and Comcast@Home high-speed cable Internet service.

**(2) DBS Competitors Are Forming Strategic Alliances To Market Bundled Interactive And Internet Services Together With Video Programming Services.**

The competitive necessity to offer consumers an array of new services as well as a variety of video programming has not been lost on Comcast's DBS competitors, who have formed a series of strategic alliances with LECs and others to market bundled interactive and Internet services together with video programming.

For example, Bell Atlantic Corp. recently announced an agreement with DirecTV to market its DBS service to Bell Atlantic telephone customers in the greater Boston area.<sup>28</sup> In 1998, SBC Communications, Inc. ("SBC") and DirecTV entered into an alliance which added the DirecTV programming service to the bundled package of communications, entertainment, and Internet services that SBC sells to owners of multiple dwelling units through SBC's SmartMoves® program. And, in July of this year, SBC and DirecTV extended their relationship by entering into a strategic marketing and distribution agreement which will allow SBC to make digital satellite television available to its *18 million* Southwestern Bell, Nevada Bell, and Pacific Bell residential telephone customers.<sup>29</sup> SBC and DirecTV have wasted no time in launching these bundled services. Just last week, SBC announced the launch of bundled telephone, satellite television, and high-speed Internet access service in its Fremont, California and Dallas, Texas

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<sup>28</sup> Ronald Rosenberg, *Bell Atlantic to Market DirecTV*, THE BOSTON GLOBE, May 20, 1999.

<sup>29</sup> News Release, *SBC Signs Strategic Marketing Agreement With DirecTV To Offer Television Entertainment Programming To Its 18 Million Residential Customers*, July 16, 1999 (available at <http://www.directv.com/press/pressdel/0,1112,204,00.html>); *see also* Alan Breznick, *DBS Providers Unveil Plans to Challenge Cable*, CABLE WORLD, July 26, 1999 at 10.

service areas.<sup>30</sup>

DirecTV had already entered into an agreement with Wink Communications to incorporate Wink's interactive television software in new satellite television set-top boxes when it announced that its corporate parent, Hughes Electronics Corp. (a division of General Motors), had taken a four percent equity stake in Wink. DirecTV expects to have Wink's technology installed in more than four million set-top boxes by the end of 2001.<sup>31</sup> DirecTV also purchased ten percent of TiVo Inc., "one of two companies marketing the new breed of 'personal video recorders.'"<sup>32</sup>

Finally, DirecTV and the dominant online service provider America Online, Inc. ("AOL") have formed an alliance to develop and market integrated digital broadband entertainment services. The companies had already announced plans jointly to bring the AOL TV interactive television service to market next year through new DirecTV set-top boxes when AOL and Hughes Electronics Corp. announced a strategic alliance in which AOL will invest \$1.5 billion in DirecTV and DirecPC; AOL will market the DirecTV/AOL TV package to more than 18 million AOL and CompuServe members in the United States while DirecTV will market the package to its 7.4 million customers.<sup>33</sup> In addition to AOL TV, the companies will market a high-speed Internet service for personal computers, AOL-Plus via DirecPC, a broadband service that AOL will promote online. DirecTV president Eddy Hartenstein stated that the AOL-Plus service will be priced to compete with alternative services such as cable modems, and a portion

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<sup>30</sup> Stephanie N. Mehta, *SBC to Launch Phone-Service 'Bundles' In Two Markets to Compete With AT&T*, THE WALL STREET JOURNAL, August 24, 1999 at B7.

<sup>31</sup> Alan Breznick, *DBS Providers Unveil Plans to Challenge Cable*, CABLE WORLD, July 26, 1999 at 10.

<sup>32</sup> Alan Breznick, *DirecTV Buys TiVo Stake, Closes PrimeStar*, CABLE WORLD, May 3, 1999 at 8.

<sup>33</sup> Monica Hogan, *AOL Puts Cash, Clout Into Satellite Platforms*, MULTICHANNEL NEWS, June 28, 1999 at 1, 50; see also News Release, *America Online and Hughes Electronics Form Strategic Alliance To Market Unparalleled Digital Entertainment and Internet Services* (available at <http://www.directv.com/press/pressdel/0,1112,198,00.html>).

of the marketing budget made possible by AOL's \$1.5 billion investment may be used to subsidize consumer hardware purchases.<sup>34</sup> For its part, in April 1999, Echostar unveiled its deal with Microsoft's WebTV Networks to fold the television-Internet service into its Dish Network satellite-TV receiver, and last May announced the addition of five new interactive channels on the service.<sup>35</sup> All of these transactions, which illustrate the heightened level of competition taking place in the MVPD market today, demonstrate that the continued characterization by DBS of its cable competitors as "monopolists" is disingenuous. In reality, cable operators such as Comcast are doing competitive battle with some of the largest and most well-financed communications entities in the world.

**B. Comcast Faces Competition From MVPDs Other Than DBS, Including Overbuilders, OVS, And MMDS Operators.**

In addition to effective competition from DBS providers, Comcast also competes head-to-head with LEC- and electric utility-affiliated overbuilders, OVS, and MMDS operators. Today, Comcast faces cable overbuild competition in eight percent of its franchises compared to only one percent in 1996.

In its southeastern Michigan cluster, for example, Comcast competes in fourteen Michigan communities with the cable overbuilder Ameritech New Media, which currently is a franchised cable operator in 109 cities and towns containing more than 1.5 million households. Ameritech currently serves approximately 250,000 cable customers in the Cleveland, Chicago, Detroit, and Columbus, Ohio areas.<sup>36</sup> In Connecticut, Comcast competes with the LEC Southern

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<sup>34</sup> Monica Hogan, *AOL Puts Cash, Clout Into Satellite Platforms*, MULTICHANNEL NEWS, June 28, 1999 at 50.

<sup>35</sup> Alan Breznick, *DirecTV Buys TiVo Stake, Closes PrimeStar*, CABLE WORLD, May 3, 1999 at 8. See also Joe Estrella, *Trade Show Hits DBS in Transition*, MULTICHANNEL NEWS, July 19, 1999; Press Release, *Echostar Continues To Add Channels to High-Speed Interactive Television Broadcast Service* (available at [http://www.dishtv.com/profile/press/press/press197\\_2.htm](http://www.dishtv.com/profile/press/press/press197_2.htm)).

<sup>36</sup> Cableday, Thursday, August 12, 1999 at 2 (Cahners Publications); see <http://www.ameritech.com/products/americast/servicearea.html>.

New England Telephone ("SNET"), which holds a state-wide cable franchise granted in 1996.<sup>37</sup> In California, Comcast competes with an MMDS formerly owned by LEC-affiliated Pacific Bell Video Services, which operates in Comcast's Orange County, Seal Beach, Santa Ana, Newport Beach, Buena Park, Fullerton, and Placentia franchise areas. In the Charleston, South Carolina and Panama City, Florida areas, Comcast competes against the overbuilder Knology, which offers a bundled package of digital cable, telephone and Internet services. In Georgia and Florida, Comcast competes with BellSouth.<sup>38</sup>

RCN Corporation ("RCN"), an electric utility-affiliated OVS/overbuilder, has targeted the marketing of its bundled video, telephony, and high-speed Internet services in the Boston to Washington, D.C. and San Francisco to San Diego corridors and is "the nation's largest targeted Internet service provider."<sup>39</sup> Comcast competes throughout its key Mid-Atlantic cluster with RCN. According to RCN, in the last quarter of 1998 alone its "advanced fiber-optic connections grew 48.9%, and on-net voice, data and video connections grew 48%, 69% and nearly 50%, respectively."<sup>40</sup> RCN, successor to SMATV operator Liberty Cable of New York, acknowledges that it uses the Commission's streamlined OVS certification rules to obtain traditional cable television franchises from local governments on more favorable terms than those imposed on cable operators.<sup>41</sup>

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<sup>37</sup> See Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, *Fourth Annual Report*, 13 FCC Rcd 1034, 1101-02, para. 113 (1998).

<sup>38</sup> In 1997, the Commission held that Comcast was subject to effective competition from a BellSouth affiliate in Georgia. See *Comcast Cablevision of the South*, 13 FCC Rcd 1676 (Cab. Serv. Bur. 1997).

<sup>39</sup> Press Release, *To Capitalize on Unprecedented Growth, RCN Corporation Hires Two Seasoned Executives to Attract, Develop and Retain Highly-Qualified Employees*, August 3, 1999 (available at <http://www.rcn.com/investor/press/08-99/08-03-99/08-03-99.html>).

<sup>40</sup> *RCN Comments* at 4; see Alan Breznick, *Fiber-Optic Highway Drives RCN's Success*, CABLE WORLD, February 15, 1999 (available at <http://www.rcn.com/investor/news/02.15.99.html>).

<sup>41</sup> The OVS model has proven useful to RCN because franchising authorities "have exhibited a willingness to negotiate [cable television] franchises with RCN more rapidly or on terms which are less onerous than would otherwise have been the case." RCN Corporation

As an OVS operator in New Jersey and the Philadelphia metropolitan area, RCN states that it will compete with Comcast within the next several months.<sup>42</sup> RCN provides service in the Washington, D.C. metropolitan area under the name Starpower, a joint venture with an unregulated subsidiary of Potomac Electric Power Company, and will soon compete with Comcast in Washington, D.C., the Maryland suburbs of Washington, and Arlington, Virginia.<sup>43</sup> On July 26, 1999, RCN announced that it had launched service in the Washington, D.C. suburb of Gaithersburg, Maryland,<sup>44</sup> and on August 3, 1999, RCN signed a fifteen-year franchise to provide service in Montgomery County, Maryland on more favorable terms than those imposed by the County on the incumbent operator Prime Cable.<sup>45</sup> In little more than one year of operation in Washington, D.C., RCN reports cable penetration of thirty percent and local phone penetration in the mid-twenty percent range in its service area.<sup>46</sup> In view of the level of competitive growth

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(. . . continued)

Comments in CS Docket No. 99-230 at 9 (filed August 6, 1999) ("*RCN Comments*").

<sup>42</sup> *RCN Comments* at 8; Press release, *RCN Begins Construction in Philadelphia, Company's Initial Progress Far Outpaces Early Development of Prior Markets*, July 15, 1999 (available at <http://www.rcn.com/investor/press/07-99/07-15-99/07-15-99.html>).

<sup>43</sup> *RCN Comments* at 7-8. Comcast holds options to acquire the Washington, D.C. cable system from AT&T and the Montgomery County, Maryland and Arlington County, Virginia cable systems from Prime Cable. As a result of its transaction with Jones InterCable, Comcast now owns the Prince George's County, Maryland and Alexandria, Virginia cable systems.

<sup>44</sup> Press Release, *RCN Launches Service in Gaithersburg, Maryland*, July 26, 1999 (available at <http://www.rcn.com/investor/press/07-99/07-26-99/07-26-99.html>); Linda Haugsted, *Boston Pact Caps Busy Week for RCN*, MULTICHANNEL NEWS, August 2, 1999 at 3, 50.

<sup>45</sup> Press Release, *RCN Doubles Size of Washington Market With Approval To Serve Montgomery County, Maryland*, August 3, 1999 (available at <http://www.rcn.com/investor/press/08-99/08-03-99-2/08-03-99-2.html>); Joe Estrella, *Starpower Gets 15-Year Md. Franchise*, MULTICHANNEL NEWS ONLINE, August 9, 1999 (available at <http://www.multichannelnews.com/8.shtml>); *RCN Doubles D.C. Cluster*, MULTICHANNEL NEWS, August 9, 1999 at 57; *see also* COMMUNICATIONS DAILY, August 4, 1999.

<sup>46</sup> Press Release, *RCN Launches Service in Gaithersburg, Maryland*, July 26, 1999 (available at <http://www.rcn.com/investor/press/07-99/07-26-99/07-26-99.html>); Linda Haugsted, *Boston Pact Caps Busy Week for RCN*, MULTICHANNEL NEWS, August 2, 1999 at 3, 50.

that RCN has sustained over the past year, RCN's self-serving calls for preferential regulatory treatment under the Commission's program access, cable inside wiring, and OVS rules is plainly overreaching and should be rejected.

**C. Comcast Is Responding To A Dynamic Communications Marketplace.**

As the foregoing confirms, the multichannel video marketplace has developed into an intensely competitive and challenging one for Comcast and other cable MSOs. Indeed, 1999 has been a year in which Comcast, in response to these competitive forces, has evolved from a traditional cable television operator into an interactive broadband and digital services company providing greater choice at competitive prices. To succeed amid a growing tide of competition, Comcast has invested in infrastructure, acquired new systems to achieve economies of scale, and has in the process provided customers with greater choices in programming and other services at reasonable rates. These competitive responses are consistent with the policies advanced by both the Congress and the Commission.

**II. INDICIA OTHER THAN PRICE ARE THE KEY MEASURES OF COMPETITION IN TODAY'S VIDEO MARKETPLACE.**

**A. The Availability Of New Services For Consumers Has Become The Key Competitive Factor As The Video Marketplace Continues To Expand.**

Today's video marketplace has evolved to include not only expanded offerings of traditional video programming, but new services such as digital video delivery, high-speed cable Internet, and telephony. As a result, the price of video service alone is no longer the key measure of competition. Rather, the touchstone of competition should be consumer choice and customer satisfaction in the delivery of both video programming and new advanced services.

This increasing level of competition in the MVPD market motivated Comcast to take the lead in the deployment of new digital cable service. Comcast has made the rebuilding of infrastructure and the offering of more programming choices for consumers a top priority. As a direct result of this investment, Comcast Digital Cable Service currently provides more than 170 channels of programming with CD-quality picture and sound and an interactive on-screen guide.

The service offers up to thirty-five premium movie channels (*e.g.*, ten HBO screens compared to the two or three offered on an analog system) and thirty-eight channels of Comcast Home Theatre pay-per-view, which provides a virtual multiplex theatre in the home. Additionally, Comcast Digital Cable offers over forty commercial-free digital music channels, and its interactive on-screen program guide allows customers to search for programs by title, time, channel, or category, and provides both greater service and greater choice to subscribers. As of August 1999, Comcast Digital Cable served approximately 285,000 customers. Last year at this time, Comcast expected to serve 50,000 customers by the end of 1998 and was adding approximately 300 digital cable customers per week. In the second quarter of 1999, Comcast added an average of 8,000 digital cable customers per week, and during a two-week period in July added over 10,000 digital customers each week. At current deployment rates, Comcast expects to serve 400,000-450,000 digital cable customers by year-end 1999, and Comcast Digital Cable is now available to sixty percent of Comcast's total subscriber base.

Competition also has motivated Comcast to lead in the deployment of new broadband services. With over 5000 Internet service providers ("ISPs") and a rapidly expanding range of facilities-based competitors currently in business (ILEC, CLEC, IXC, MMDS Wireless, Satellite, *etc.*), the Internet services market is itself already extremely competitive.<sup>47</sup> To meet customer demand for additional advanced services, Comcast is offering high-speed cable Internet services over its upgraded cable facilities. Comcast@Home delivers unlimited high-speed broadband Internet services directly to a customer's personal computer using a coaxial cable connection, cable modem, and automatic access to Internet browsers at speeds exceeding one megabyte per second. Comcast@Home also provides local content, e-mail, personal web space, chat rooms, and twenty-four hour, toll-free customer support seven days per week. Last year at this time, Comcast@Home served 25,000 customers. Today, Comcast@Home provides high-speed cable

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<sup>47</sup> See Comments of Comcast Cable Communications, Inc. in *Internet Ventures, Inc., Internet On-Ramp, Inc. Petition For Declaratory Ruling that Internet Service Providers are Entitled to Leased Access to Cable Facilities Under Section 612 of the Communications Act of 1934, as Amended*, CSR-5407-L (filed July 13, 1999).

Internet services to more than 100,000 customers, and Comcast expects to serve more than 130,000 high-speed cable customers by the end of 1999. Comcast's high-speed cable Internet services are now available to more than 2.4 million households (43.6% of subscribers).

Comcast's deployment of new digital and broadband services was made possible by its nearly \$2 billion investment in fiber-optics and nationwide system rebuilds. This investment has been financed by investors and has been taken solely at Comcast's risk. The result is that new services such as Comcast's Digital Cable and Comcast@Home are now broadly available service options in our local communities, as we compete with DBS, OVS, LECs, CLECs, ISPs, and OSPs for customers.

Comcast continues to make these investments with the reasonable expectation that it will have the ability to compete unfettered in a robust marketplace inexorably moving toward expanded competition and reduced regulation. But marketplace uncertainty regarding potential federal or local "forced access" regulations inevitably deters investment and inhibits the pace of deployment. The adverse impact on cable broadband investment and deployment is graphically illustrated by the stock market's reaction to the district court decision in *AT&T v. City of Portland*.<sup>48</sup> Although Comcast believes the *Portland* decision is likely to be reversed on appeal, it demonstrates how the threat of regulation can reduce incentives for broadband infrastructure investment and, therefore, retard the pace of broadband deployment.

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<sup>48</sup> *AT&T v. City of Portland and Multnomah County*, CV 99-65-PA (D.Ore. June 3, 1999), *appeal pending*, No. 99-35609 (9th Cir.). The district court held, erroneously in Comcast's view, that certain local governments had the power under their franchising agreements to appropriate bandwidth from a cable operator planning to provide broadband services over its cable system. In reaction to the *Portland* decision, the shares of At Home Corporation declined twelve percent on June 4 from 107¾ to 94½, while shares of service competitor AOL, which seeks such regulation and does not invest in competing facilities, increased by eleven percent from 106¾ to 118. Local regulations similar to those at issue in the *Portland* case have forced Comcast to bring legal action against Broward County, Florida. *Comcast Cablevision of Broward County, et al. v. Broward County, Florida*, 99-6934 (S.D. Fla. filed July 20, 1999).

Investors perceive “forced access” initiatives as indicating that cable Internet operations will be subject to more burdensome federal or local regulations in the future. The perception that *government* may transfer control of business decisions and competitive responses from operators to regulators and may take actions which amount to a *de facto* confiscation of successful operations, translates into increased risk for investors, which adversely affects stock prices and causes the cost of capital to rise.<sup>49</sup> Indeed, the Commission has recognized both the importance of creating broadband infrastructure and the destructive effect that regulation would have upon broadband investment. “The market would be rocked with uncertainty; investment would be stymied. Consumers would be hurt.”<sup>50</sup> The Commission, consequently, has wisely taken a hands-off approach to cable Internet services and has urged local governments not to impose regulation on cable Internet offerings.<sup>51</sup>

**B. Comcast Competes In Terms Of Service Quality And Innovation As Well As Price.**

While the advent of serious competition from a variety of sources and for a variety of services has reduced the significance of price as the key indicator of competition, it has heightened the importance of customer service and consumer choice. In addition to offering new services, Comcast has initiated a restructuring of its program service packages to compete with the multi-level offerings of its competitors, particularly DBS. DirecTV, for example, offers eight supplementary video programming packages in addition to two “Basic Packages,” which are analogous to Comcast’s BST and CPST and which DirecTV promotes as a “great cable

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<sup>49</sup> “[W]e have no doubt cable’s subperformance can be traced entirely to investor concern of *de facto* common-carrier status. The notion that any home-town ISP . . . could have access to cable’s proprietary and expensive broadband plant is not what Wall Street had in mind. . . . [cable stocks have drawn investors] because of hard-won, superior technology.” Paul Kagan Associates, Inc., CABLE TV INVESTOR, No. 541, July 26, 1999 at 1.

<sup>50</sup> Speech by Federal Communications Commission Chairman William E. Kennard before the National Cable Television Association (June 15, 1999).

<sup>51</sup> *Id.*

replacement value.”<sup>52</sup>

Comcast now generally offers a low-priced BST and CPST along with additional optional programming tiers and digital programming to provide greater consumer choice in both programming and price. The low-priced BST (generally priced between \$10 and \$12) includes all local broadcast signals, C-SPAN, PEG channels required by the franchise agreement, and a small number of additional services. Comcast’s CPST (generally priced between \$15 and \$20) includes many of the more established and popular cable programming networks such as ESPN, CNN, Lifetime, MTV, A&E, and Discovery. To maximize customer options, Comcast provides newer services such as Animal Planet, Turner Classic Movies, The History Channel, Sci-Fi Channel, and Home & Garden in an additional service tier or tiers which Comcast markets as “Value Paks.” Premium services such as HBO, Showtime, TMC, *etc.* are also available *a la carte*, and, where Comcast Digital Cable has been deployed, multiplexed versions of these premium services are also offered.

These programming innovations, which create additional price points, also have provided customers the ability to better tailor programming purchases to their individual tastes or preferences. Price-sensitive customers have the choice of ordering only an inexpensive broadcast basic tier and, if they so desire, an inexpensive CPST, while customers seeking greater programming choices may purchase an additional CPST or two, and/or a variety of premium, digital, and broadband services. The development and launch of new products, services, and options for consumers is helping Comcast to redefine its relationship with its customers, and its response to competition reflects the recognition that customer choice has become the primary competitive battleground.

### **C. The Expansion Of Internet Protocol Telephony Facilitates Future Growth.**

Comcast’s deployment of broadband services also includes its involvement in providing wired local exchange service, and its leadership in developing Internet Protocol (“IP”)

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<sup>52</sup> See <http://www.directv.com/programming/programingpages/0,1093,135,00.html>.

technology. Comcast currently provides local telephony service primarily through its control of Jones Telecommunications, which serves 12,000 dialtone customers located principally in Prince George's County, Maryland and Alexandria, Virginia. The Jones local telephony service includes a range of custom and CLASS calling features such as call waiting and caller ID, with no usage-based features such as measured toll or long distance service. Comcast's other local operations include service to multiple dwelling units in Ft. Lauderdale, Florida and Baltimore, Maryland with custom and CLASS features, as well as regional toll usage services such as intraLATA toll and affiliated long distance services. Comcast began these services in 1998. Each of these operations currently employ traditional circuit-switched architecture, rather than hybrid fiber-coaxial technology, using a combination of Lucent and Nortel switching platforms. Comcast also provides interexchange telecommunications services to business and residential customers in more than a dozen states through Comcast Telecommunications, Inc. d/b/a Comcast Long Distance. Both Jones and Comcast operations continue to add telephony customers to their respective base services, and in May 1999 Comcast announced its agreement with AT&T to collaborate in bringing competitive local exchange service through AT&T-branded telephony to Comcast markets on an expedited basis.<sup>53</sup>

Comcast is also a leader in the development of IP telephony, a subset of PacketCable®, which we believe will emerge as the leading multimedia technology delivery mechanism. Recent developments in several technological arenas have been shaped by Internet-based technology, and Comcast believes that this trend will also shape the future of local telephony. As a result, Comcast has led the PacketCable initiative through CableLabs to deliver a system for packet-based multimedia on cable networks with software and hardware from many suppliers.

Comcast's involvement through CableLabs in the PacketCable process has yielded a fast-

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<sup>53</sup> The agreement between Comcast and AT&T providesS that the venture will begin as soon as AT&T has concluded separate telephony agreements with at least two other non-AT&T affiliated multiple system operators. Press Release, *AT&T and Comcast Agree to Swap Cable Systems, Comcast to Add 2 Million New Subscribers, Two Companies to Collaborate in Offering Cable Telephony* (available at <http://www.comcast.com>). See also "Ma Bell's Plan is to Serve Up TV, Phone via Cable", THE WALL STREET JOURNAL, May 6, 1999, at B1.

track, collaborative process with the participation of a wide variety of vendors. Approximately 250 supplying companies are helping to craft specifications and deploy interoperable products that will be compatible with cable modem infrastructure through the Data Over Cable Service Interface Specification (DOCSIS). CableLabs released specifications for hardware, signalling, and security for review in December 1998, and recently hosted successful interoperability testing events for eleven supplying companies to establish calls using equipment that implements the PacketCable specifications.<sup>54</sup> Further interoperability events planned for Fall 1999 will expand the range of vendors, equipment, and protocols tested according to additional PacketCable specifications. Comcast also expects to engage in technology trials in the near future.

Comcast believes that IP telephony will provide an additional mechanism for increased customer choice and will become yet another important competitive factor in the near future.

**D. Comcast Has Structured And Priced Its Service Offerings To Compete In Today's Competitive Market.**

Despite substantial increases in programming costs and the extraordinary expense of rebuilding and upgrading its cable systems for the new millennium, approximately seventy percent of Comcast's regulated cable systems presently charge retail prices below the Commission's competitive benchmark, and the number of Comcast's below-benchmark systems has increased steadily since 1995.<sup>55</sup> As noted above, Comcast has also restructured its program service offerings to create low-priced, entry-level BSTs and CPSTs. At the same time, Comcast is offering additional programming services, a greater variety of programming packages, and new services. Each of these strategies is aimed at increasing subscriber choice in both service and price, and collectively represent Comcast's competitive response to the multi-level programming packages and entry-level pricing tactics of its DBS competitors. Subscribers consequently are not only receiving more programming options – they are receiving increased

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<sup>54</sup> Press Release, *CableLabs Announces PacketCable Specifications*, December 2, 1998; Press Release, *CableLabs Hosts PacketCable Interoperability Testing*, July 8, 1999.

<sup>55</sup> As of June 1997, 47.2 percent of Comcast's regulated systems charged rates below the Commission's benchmark, up from 44.4 percent in 1996, and 41.2 percent in 1995.

value.

**E. Comcast Distinguishes Itself In The MVPD Marketplace By Building Ever-Stronger Relationships With Local Communities.**

In addition to providing customers with more choices in video programming and other advanced services, Comcast distinguishes itself in the communities in which it operates. Comcast is an acknowledged leader in the provision of free high-speed cable Internet services to public and private schools and libraries, produces high-quality original and local community programming, and provides state-of-the-art broadband educational networks to educational institutions. These efforts both strengthen Comcast's roots in the communities it serves and sets it apart from other MVPD competitors by providing distinct consumer benefits.

In its comments last year, Comcast reported that it provided free high-speed cable Internet service to over 320 schools and forty public libraries. Last November, following Comcast's announcement that it had connected almost every public and private school and library in Baltimore County to its cable modem service, Baltimore County educators and government officials praised Comcast for its efforts in helping education.<sup>56</sup> This past June, Comcast celebrated the installation of its free high-speed cable Internet service using Comcast@Home to 500 primary and secondary schools and fifty public libraries.<sup>57</sup> United States Senators Ernest F. Hollings and Spencer Abraham both praised Comcast for its leadership in improving education. Senator Abraham commended "Comcast Cable on its tremendous efforts to use advanced cable technology to improve the educational experience for thousands of elementary and high school students in Michigan, as well as across the entire country."<sup>58</sup> In the less than ninety days since that time (excluding the systems Comcast recently acquired in its

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<sup>56</sup> Howard Libit, *Comcast Widens its Web to Give Schools Internet; Cable Company Provides Links in Baltimore County*, THE BALTIMORE SUN, November 21, 1998 at 10B.

<sup>57</sup> Press Release, *Comcast Cable Reaches Milestone 500th K-12 School and 50th Library with Free Ultra High-Speed Internet Service*, June 11, 1999 (available at <http://www.comcast.com/about/presscenter/pr061199.htm>).

<sup>58</sup> *Id.*

transaction with Jones InterCable), Comcast has increased its free cable-modem connections to 630 public and private schools and to sixty public libraries, nearly doubling the number of free connections provided since last year.

To maximize the benefit of these community-directed services, Comcast provides free Internet training for parents, students, educators, and senior citizens, and operates its own award-winning Internet site devoted to education, [www.OnlineSchoolyard.com](http://www.OnlineSchoolyard.com), which provides links to over 600 of the best K-12 education sites on the Internet. Comcast OnlineSchoolyard was named the Cable in The Classroom Web Site of The Month for January 1999, has received a Beacon Award from the National Cable Television Public Affairs Association, a Best of the Planet Award from 2Ask.com, and was selected by Reader's Digest Look Smart as an Editor's Choice site for K-12 Education for Students and Teachers. Comcast evaluates all the sites included in OnlineSchoolyard and includes only those considered to have educational value.<sup>59</sup> In addition to providing useful links for both teachers and students, OnlineSchoolyard also features original material developed by Comcast and its education partners. As the foregoing demonstrates, Comcast is committed to providing increasing opportunities for education and community training.

Comcast also produces original, high-quality local and community programming in its franchise areas, which is demonstrative of Comcast's commitment to meet local needs. Comcast cablecasts CN8 to almost three million subscribers in New Jersey, Pennsylvania, and the Baltimore, Maryland area. This highly acclaimed new original network provides the kind of community-oriented programming that has become increasingly unavailable from local broadcast stations.<sup>60</sup> Comcast provides free cable television service to municipal buildings, schools and

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<sup>59</sup> For teachers, Comcast's OnlineSchoolyard includes comprehensive resources on technology training, grants, lesson plans, articles and links for professional development, and classroom management. OnlineSchoolyard also leads students and teachers to sites that cover traditional subjects such as Arts, Computers, English, Foreign Languages, Math, Science, Social Studies, and Physical Education/Health.

<sup>60</sup> The Philadelphia chapter of the National Academy of Television Arts and Sciences recently recognized Comcast with a record twenty-four local Emmy nominations, and CN8, the  
(continued . . .)

libraries in all its franchise areas, and in 1998 donated tens of millions of dollars of air time to non-profit organizations for public service announcements.

Comcast also co-sponsors a wide variety of community events with a particular focus on education, volunteerism, and promoting arts and culture. These community events include "Philadelphia Cares Day," "Drug-Free Youth," "Save The Music," and "Cops for Kids." For example, in May 1999, Comcast, in partnership with VH1's "Save The Music," contributed over \$100,000 worth of instruments to Philadelphia area elementary schools. VH1 Save The Music is a non-profit organization dedicated to improving the quality of education in America's public schools by restoring and supporting music programs across the United States and by raising public awareness about the importance of music participation for young people. Comcast is proud to be able to provide this kind of support to the communities in which it operates.

As reported last year, Comcast provides broadband educational networks to educational institutions. In Mercer County, New Jersey, for example, Comcast constructed MercerNet, which connects twelve public high schools, Mercer County Community College, and the Invention Factory Science Center. MercerNet provides enhanced collaboration and resource sharing for courses, staff development, video conferencing, adult education, business, and community use together with high-speed data transmission and Internet access. Through Comcast Online, Comcast also offers commercial broadband network contracts to schools and libraries. Comcast Online currently serves approximately 250 schools and libraries with an average of twenty-five to forty workstations per school. Comcast Online expects to serve 300 schools and libraries commercially by year-end. Comcast's ability to provide broadband competition reduces the costs to schools and libraries of establishing state-of-the-art communications and Internet facilities and therefore enhances both the quality and quantity of educational opportunities in the community.

These activities demonstrate the depth of Comcast's commitment both to education and

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*(... continued)*

Comcast Network, received eight nominations.

to the communities in which it operates. Comcast is continually expanding its community involvement, not only because it is the right thing to do, but because good citizenship is good business. Comcast's local commitment contributes to its ability to compete in the local marketplace because it generates a range of benefits to consumers and goodwill in the community.

### **III. ECONOMIC CHANGES IN THE VIDEO MARKETPLACE REFLECT A COMPETITIVE LANDSCAPE.**

#### **A. Consolidation In The Cable Industry Parallels Consolidation In Other High-Technology And Telecommunications Industry Segments And Is A Competitive Response To Challenges From DBS, LECs, And Others.**

Mergers and consolidations have become characteristic of worldwide economies as businesses attempt to maximize efficiencies of scale and respond to dynamic economic and competitive conditions. The cable industry and the MVPD market are no exception in seeking the economic benefits of consolidation. Indeed, the cable television industry is just one of many high-technology and telecommunications industry sectors that have experienced this phenomenon in recent years. The difference between the cable industry and other industries, however, lies in the fact that, for cable operators, the fundamental costs of providing cable television service (*i.e.*, programming and network upgrades) have increased dramatically. Thus, consolidation through clustering in the cable industry generally, and for Comcast in particular, is a competitive response that (i) allows the economic efficiencies of consolidation to offset the increasing costs of providing service, and (ii) positions Comcast to compete effectively in both the multichannel video and broadband markets.

Consolidation in the telephone industry is just one example of how these businesses may attempt to use efficiencies of scale and scope to reduce costs and expand their operations.

Merger activity in the telephone industry has grown significantly during the past several years.<sup>61</sup>

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<sup>61</sup> Approved or pending mergers among both LECs and interexchange carriers include, *e.g.*, those between SBC and Pacific Telesis, NYNEX and Bell Atlantic, WorldCom and MCI, SBC and SNET, BellSouth and Qwest, Bell Atlantic and GTE, Qwest and US West, Global Crossing, (continued . . .)

In approving such mergers, the Commission has acknowledged the competitive benefits that consolidation can bring to consumers, including the more rapid deployment of advanced telecommunications capabilities. For example, the Commission has found that consolidation, by combining assets and reducing redundant costs, may enhance competition because a “merged entity will be able to expand its operations and enter into new local markets more quickly than either party alone could absent the merger” and that customers can receive “higher quality and more reliable services.”<sup>62</sup>

The DBS industry also illustrates how consolidation can promote competition. In 1994, when DBS service was authorized, nine different entities entered the business.<sup>63</sup> Following DirecTV’s recent acquisitions of USSB and Primestar, and Echostar’s acquisition of the MCI satellite,<sup>64</sup> however, only two major providers remain today. Financial analysts understood that

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Ltd. and Frontier, and SBC and Ameritech. See Pacific Telesis Group and SBC Communications, Inc., 12 FCC Rcd 2624 (1996); Applications of NYNEX Corp. and Bell Atlantic Corp. for Consent to Transfer Control of NYNEX Corp. and its Subsidiaries, 12 FCC Rcd 19985 (1997) (“*NYNEX-Bell Atlantic Order*”); Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc., 13 FCC Rcd 18025 (1998) (“*WorldCom-MCI Order*”); Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corporation, Transferor To SBC Corporation, Transferee, FCC 98-276, 14 Communications Reg. 24 (P&F) (1998); Seth Schiesel, *BellSouth Agrees to Acquire 10% of Qwest*, THE NEW YORK TIMES, April 20, 1999; *A Phone Merger Clears a Hurdle*, THE NEW YORK TIMES, May 8 1999 (Bell Atlantic-GTE merger); Laura M. Holson, *US West Seen In a Merger That Is Valued at \$37 Billion*, THE NEW YORK TIMES, May 17, 1999; Seth Schiesel, *A ‘Practical’ Solution; F.C.C.’s Give and Take in SBC-Ameritech Merger Deal*, THE NEW YORK TIMES, July 1, 1999.

<sup>62</sup> *WorldCom-MCI Order*, 13 FCC Rcd at 18138 (footnote omitted). Economic efficiencies achieved due to consolidation can improve market performance and enhance a firm’s “ability and incentive to compete . . . result[ing] in lower prices, improved quality, enhanced service or new products.” *NYNEX-Bell Atlantic Order*, 12 FCC Rcd at 20063.

<sup>63</sup> See Joe Estrella, *Trade Show Hits DBS in Transition*, MULTICHANNEL NEWS, July 19, 1999.

<sup>64</sup> MCI Telecommunications Corporation, For Consent to Assignment of Authorization to Construct, Launch and Operate a Direct Broadcast Satellite System Using 28 Frequency Channels at the 110° W.L. Location, *Order and Authorization*, FCC 99-109 (released May 19, 1999).

this dramatic reduction in DBS providers would actually enhance MVPD competition. The acquisition of additional spectrum from other DBS licenses by both Echostar and DirecTV positions each of the remaining DBS players to offer more programming and new services to consumers. Consequently, Wall Street analysts believed that “[t]wo players will be much better for competition going forward.”<sup>65</sup> Indeed, these consolidations in the DBS industry were key developments in building today’s competitive MVPD market.

**B. Competition Drives Comcast Toward More Efficient Uses Of Its Network.**

In response to this consolidation among competitors, Comcast has focused on realigning its operations into dense regional clusters. Clustering also allows Comcast to respond to increased costs of programming, technology upgrades and competitive pressures and opportunities by reducing operating expenses and making more efficient use of its existing network.

Clustering allows Comcast to reduce costs in several ways: it permits Comcast to use a smaller number of headends to serve its subscribers, which lowers equipment, real estate, and labor costs, as well as reducing associated satellite costs; it enables marketing and product rollout efficiencies across a region; it permits more efficient production of desirable local and regional programming; and it allows more effective branding of video, broadband, and telecommunications services. Clustering also creates efficiencies in sampling customer preferences and gives Comcast, for the first time, an ability to provide service throughout almost an entire broadcast television market. This development increases advertising revenues and therefore offsets some of the large cost increases Comcast has experienced in programming and upgrade expenses, which in turn can help to reduce pressure on retail prices. Comcast has focused on becoming a stronger and more efficient presence in the markets it serves, and consequently can compete more effectively with DBS, LECs, overbuilders, and other MVPD and

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<sup>65</sup> Monica Hogan, *Wall Street Sanctions DBS Consolidation*, MULTICHANNEL NEWS, February 22, 1999 at 42.

broadband competitors. As a result, Comcast can provide more consumer benefits through additional services at competitive prices.

The development of Comcast's Mid-Atlantic cluster provides a good example. By building this cluster, Comcast has been able to commonly brand its video, digital and broadband services to compete more effectively with major national and regional brands such as DirecTV and Bell Atlantic. It has also resulted in the production of more high-quality local programming such as CN8, which enables Comcast to better meet the programming needs of the communities it serves and permits Comcast to provide more and better local origination programming despite generally escalating programming costs. Finally, by reducing costs, Comcast has been able to maintain retail prices at reasonable levels in the face of the mounting programming and upgrade expenditures which must be made to remain competitive in today's MVPD market. BellSouth's contention that the trend toward clustering gives cable MSO's a "stranglehold over distribution of video programming in local markets"<sup>66</sup> is entirely unfounded and inconsistent with recent market developments. Predictably, a company such as BellSouth with a nine-state wireline "cluster" would seek to impair the ability of its competitor to create its own clusters in order to compete effectively in the video, broadband, and voice markets. As Comcast has demonstrated here, clustering provides tangible benefits to consumers in the form of lower prices, more rapid rollout of advanced services, and higher quality local and regional programming, among others.

**C. The Cable Industry Is Characterized By Fundamentally Increasing Programming And System Upgrade Costs.**

In contrast to the telecommunications and computer industries, which have experienced declining fixed and variable costs, both system expenses and programming costs in the cable industry have been increasing dramatically. To remain competitive, cable operators must continually upgrade their systems to provide digital channel line-ups comparable to those offered by its competitors.<sup>67</sup> Consequently, Comcast has invested more than \$2 billion in fiber-optic and

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<sup>66</sup> *BellSouth Comments* at 6-7.

<sup>67</sup> For example, DirecTV has increased last year's offering of over 120 channels of  
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system upgrades over the past four years in order to provide comparable programming and retain subscribers.

In addition, Comcast's overall programming costs again increased by an average of between thirteen and fifteen percent in 1999. Sports programming costs increased by as much as twenty percent. Some popular cable programmers have increased fees by as much as thirty-three percent,<sup>68</sup> while cable programming networks continue to spend heavily on original, often widely acclaimed, programming and production, which is reflected in increased labor and rights costs throughout the entertainment industries.<sup>69</sup> The fact that cable operators pay for these increased costs in the form of higher license fees is well known. Cable MSOs such as Comcast have exhibited great sensitivity in covering these steep hikes in programming costs while maintaining reasonable subscriber rates.<sup>70</sup>

In particular, license fees for certain sports program services have increased significantly. ESPN, for example, increased its license fees by twenty percent again in 1999 based upon the network's agreement last year to pay more than \$4.8 billion for the rights to eight years of National Football League ("NFL") games.<sup>71</sup> These increases, which could exceed \$1.00 monthly

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programming, *see* Comments of DirecTV, CS Docket No. 98-102 at Exhibit 1 (filed July 31, 1998), to 211 channels this year. *See* DirecTV Service Overview (available at <http://www.directv.com/overview/overviewtablepages/0,1118,132,00.html>).

<sup>68</sup> Linda Moss, *A&E Hikes Rates Up to 33 Percent*, MULTICHANNEL NEWS, March 1, 1999 at 1, 63. License fee increases for other popular cable networks such as CNBC and MSNBC have also increased by approximately twenty-five percent. Linda Moss, *NBC's Opening Bid: \$1-Plus for Olympics*, MULTICHANNEL NEWS, April 19, 1999 at 1.

<sup>69</sup> *See, e.g.*, Lawrie Mifflin, *Network Standards as Emmy Handicap*, THE NEW YORK TIMES, July 24, 1999; Lawrie Mifflin, *In a Coup for Cable, HBO's 'Sopranos' Receives 16 Emmy Nominations*, THE NEW YORK TIMES, July 23, 1999; James Sterngold, *Reinventing the Box: How Cable Captured the Mini-Series – and the High Ground*, THE NEW YORK TIMES, September 20, 1998.

<sup>70</sup> Donna Petrozzello, *Cable Gets With The Program*, BROADCASTING AND CABLE, November 30, 1998 at 60.

<sup>71</sup> Deborah D. McAdams, *ESPN to hike license fees by 20%*, BROADCASTING AND CABLE, May 3, 1999 at 20. ESPN's fees increased by a similar amount last year.

per subscriber, are consistent with Comcast's experience. Additionally, the emergence of Fox Sports as a major bidder against ESPN and the major broadcast networks played a significant role in escalating television rights payments by 200% in 1998.<sup>72</sup> The predictable result of an additional strong bidder has been a dramatic increase in national and individual team costs, which directly affects the licensing fees which cable operators must pay. In a related development, NBC Cable reportedly is asking cable and satellite operators to sign ten-year contract extensions that increase rates for MSNBC and CNBC by eighty percent and thirty-three percent respectively, to cover the costs of its year-2000 Olympics package.<sup>73</sup>

Moreover, increasing costs and higher prices are common to all facets of the entertainment and sports industries. A typical family of four now must spend thirty percent of its weekly earnings to attend one major professional sports game,<sup>74</sup> and average ticket prices increased at three times the rate of inflation during the period between 1992 and 1997.<sup>75</sup> Even more significant is that sports programming costs are increasing despite declining television ratings.<sup>76</sup> Although the NFL's playoff game ratings have declined twenty-two percent during the past ten years, the cost of broadcasting rights for the NFL have increased substantially from year to year.<sup>77</sup>

Indeed, runaway costs for sports programming are not unique to the cable industry. For

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<sup>72</sup> *Clash of the Titans*, THE WASHINGTON POST, August 15, 1999 at D1, D9.

<sup>73</sup> Steve Donahue, *Olympics on NBC Cable Stumble at the Start*, ELECTRONIC MEDIA, August 30, 1999 at 3. The deal also would include surcharges for 270 hours of Olympic programming.

<sup>74</sup> Dan McGraw, *Big League Troubles*, US NEWS AND WORLD REPORT, July 13, 1998 at 40 (citing Team Marketing Reports).

<sup>75</sup> Richard Hoffer, Paul Zimmerman, *Scorecard*, SPORTS ILLUSTRATED, July 13, 1998 at 25.

<sup>76</sup> Rudy Martzke, *NCAA men's basketball next object in bidding wars*, USA TODAY, August 20, 1999 at 2C ("ABC is paying 287% more than Fox did for the NHL, whose TV ratings rival bowling's").

<sup>77</sup> Sally Beatty, *Ratings, Viewers for Superbowl Slipped from 1998*, WALL STREET JOURNAL, February 2, 1999 at B7; Sam Walker, *Why Softer Ratings Could Mean the NFL is Fumbling Away its Fun* THE WALL STREET JOURNAL, January 29, 1999 at A1.

example, after more than a year of tension between ABC and its affiliated television stations as to the role affiliates should play in helping ABC pay approximately \$550 million annually to broadcast NFL games, the affiliates agreed to pay ABC \$45 million annually and to return to ABC ten local Saturday morning advertising spots each year for "Monday Night Football." In exchange, the affiliates received eight extra prime-time advertising spots per week plus an ownership interest in ABC's Soap Opera Channel, which is scheduled to debut in January 2000.<sup>78</sup> This is significant because it demonstrates that comparisons between cable prices and the consumer price index fail to recognize the unique programming cost pressures which are endemic to the entire entertainment industry.

Increases in programming costs are not simply a sports phenomenon. They affect the entertainment industry generally, and result from the necessity for distributors to secure rights across all distribution media. For example, entertainment distribution packages now commonly include, in addition to television rights, Internet, licensing, marketing, and sponsorship rights.<sup>79</sup> This phenomenon reflects dynamics in the broader entertainment market that have resulted in dramatic appreciation of the values for broadcast and subscription television rights.

It is also important to understand that this characteristic cost structure of the entertainment industry differs fundamentally from computer, telephone, and other "high tech" industries where costs have steadily declined over time. In the telephone industry, for example, major cost inputs include both labor and switching equipment. By contrast, for the cable television industry, recurring programming costs constitute a major cost component. Comcast, unlike the telephone industry, cannot achieve significant cost savings by reducing its labor force because labor is a comparatively small component of its overall costs.

The Commission's regulations recognize this fundamental difference in cost structures.

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<sup>78</sup> *Company Town; ABC Stations Will Help Foot NFL Bill*, THE LOS ANGELES TIMES, August 12, 1999 at C5; Lynette Rice, *ABC affiles upright on NFL plan*, THE HOLLYWOOD REPORTER, August 11, 1999.

<sup>79</sup> Rudy Martzke, *NCAA hoops TV deal could hit \$4 billion*, USA TODAY, August 20, 1999 at C1.

For example, the Commission's price cap regulatory structure for incumbent LECs recognizes that productivity increases over time in the telephone industry due to declining costs.<sup>80</sup> The relationship between declining costs and profitability is reflected in the Commission's adoption of a productivity factor (the "X-Factor") for regulated LECs. The X-Factor incorporates the assumption that telephone companies' costs per unit of output have declined relative to the economy as a result of greater productivity gains and lower input price changes experienced by the telecommunications industry.<sup>81</sup> Similarly, in the computer industry over the last thirty years, computer chip capacity has doubled while chip production costs have been halved every eighteen months.<sup>82</sup> In contrast, the Commission declined to apply a productivity factor when it adopted its cable television rate regulations because it recognized that the cable industry does not experience this declining cost phenomenon.<sup>83</sup>

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<sup>80</sup> Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection, *Second Report and Order*, 12 FCC Rcd 18730, 18744 (1997) ("The cost of telecommunications equipment has been declining, relative to inflation, in recent years").

<sup>81</sup> Price Cap Performance Review for Local Exchange Carriers; Access Charge Reform, 12 FCC Rcd 16642, *aff'd* 12 FCC Rcd 10175 (1997).

<sup>82</sup> Steve G. Steinberg, *Chip improvements and the real truth of Moore's law*, LOS ANGELES TIMES, April 15, 1996 at 7.

<sup>83</sup> Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 – Rate Regulation, *Memorandum Opinion and Order*, 9 FCC Rcd 5760 (1994).

#### IV. THE PROGRAM ACCESS RULES HAVE ACHIEVED THEIR PRO-COMPETITIVE PURPOSES AND ARE IN NO NEED OF EXPANSION.

A handful of commenters charge that the Cable Services Bureau and the Commission have “abdicat[ed] [their] responsibility to enforce the program access law by refusing to apply it to satellite cable programming that was specifically migrated to a terrestrial delivery mode for the purpose of evading the law.”<sup>84</sup> These comments also contend that Comcast has deliberately sought to evade the Commission’s rules and the Communications Act by migrating programming from satellite to terrestrial delivery. These allegations are factually inaccurate, legally unsound, and irresponsible, and they have already been rejected by the Commission.

In the Comcast *SportsNet*<sup>85</sup> cases referred to by DirecTV, Echostar, and others, Comcast and its partners acquired local telecasting rights to certain sporting events, constructed a new studio, hired new management, and created a new programming service called Comcast SportsNet. The assertion by DirecTV and others that Comcast migrated programming from satellite to terrestrial delivery was rightly rejected by the Bureau. The Bureau found that “the service in question [SportsNet] is not simply a service that has moved from satellite to terrestrial distribution but is in fact a new service.”<sup>86</sup> As both DirecTV and Echostar are aware, Comcast SportsNet was never a satellite-delivered service, and Comcast has legitimate economic reasons to deliver SportsNet by terrestrial means; viz., that it is dramatically less expensive than satellite distribution.<sup>87</sup> Based upon (i) the dramatic differences between the old and new programming

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<sup>84</sup> *DirecTV Comments* at 3 (citing *DirecTV Inc. v. Comcast Corporation*, 13 FCC Rcd 21822 (Cab. Serv. Bur. 1998) and *Echostar Communications Corporation v. Comcast Corporation*, 14 FCC Rcd 2089 (Cab. Serv. Bur. 1999)); see also Echostar Satellite Corporation, Comments in CS Docket No. 99-230 at 2-4 (filed August 6, 1999) (“*Echostar Comments*”); BellSouth Corporation, Comments in CS Docket No. 99-230 at 2-4 (filed August 6, 1999) (“*BellSouth Comments*”); *RCN Comments* at 18-22.

<sup>85</sup> *DirecTV Inc. v. Comcast Corporation*, 13 FCC Rcd 21822 (Cab. Serv. Bur. 1998) and *Echostar Communications Corporation v. Comcast Corporation*, 14 FCC Rcd 2089 (Cab. Serv. Bur. 1999) (collectively, the “*SportsNet Cases*”).

<sup>86</sup> *DirecTV Inc.*, 13 FCC Rcd 21822 at para. 27 (footnote omitted).

<sup>87</sup> Comcast demonstrated conclusively that terrestrial delivery of Comcast SportsNet would cost approximately \$600,000 annually compared to \$2,280,000 using a full-band satellite transponder, \$1,400,000 using a second-tier satellite transponder, or between \$720,000 and  
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services, (ii) the incorporation of new programming content, and (iii) Comcast's cost-justified lease of terrestrial distribution facilities, the Bureau concluded in the *SportsNet Cases* that Comcast did not engage "in unfair or deceptive acts in creating, packaging and distributing Comcast SportsNet."<sup>88</sup>

Similarly, the argument made by some commenters that the Commission should construe its jurisdiction under Section 628(b) so expansively that it could encompass both terrestrial delivery and unaffiliated programming vendors is beyond that which the statute and good public policy can bear. Both the plain language and legislative history of Section 628 of the Communications Act confirm that Section 628(c) can only be applied "to satellite cable programming, not programming that was 'previously' satellite-delivered or the 'equivalent' of satellite cable programming. The statute defines 'satellite cable programming' as that which is transmitted via satellite."<sup>89</sup> Although Section 628(b) does confer broad jurisdiction on the Commission, "[i]t cannot . . . be converted into a tool that, on a *per se* basis, precludes cable operators from exercising competitive choices that Congress deemed legitimate."<sup>90</sup>

Given the further explosive growth of both competition and consumer choice since the *SportsNet Cases* were decided, no legal or policy justification exists to extend the program

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\$900,000 using shared digital capacity (not including one-time costs of \$250,000 for an uplink facility and annual costs of \$24,000 to uplink and \$190,000 for encoding prior to uplink). Moreover, the "terrestrial infrastructure used by [the previous licensee] . . . had available capacity so use of that network became a logistically simple and economical choice." *Id.* at 29 (footnote and internal quotes omitted).

<sup>88</sup> *Id.* at para. 32 (footnote omitted). Given the facts that "Congress did not prohibit cable operators from delivering any particular type of service terrestrially, did not prohibit cable operators from moving any particular service from satellite to terrestrial delivery, and did not provide that program access obligations remain with a programming service[.]" *id.*, the Bureau simply could not have found any unfair or deceptive acts by Comcast in creating a new terrestrially delivered programming service.

<sup>89</sup> *Id.* at para. 25 (citing 47 U.S.C. § 605(d)(1)). The Bureau also observed that the legislative history confirmed that Congress specifically intended to exclude terrestrially delivered programming from the program access law. See H.R. CONF. REP. NO. 102-862, at 91-93 (1993).

<sup>90</sup> *DirectTV Inc.*, 13 FCC Rcd 21822 at para. 33.

access rules to terrestrially delivered programming or to non-vertically integrated programmers.<sup>91</sup>

The program access statute as narrowly tailored has fostered a proliferation of MVPD competitors without unduly constraining investment in innovative programming, particularly regional and local programming. To the extent that a “program access” issue remains, it is that of a DBS distributor’s ability to retransmit local broadcast signals as part of its service.

Legislation to resolve that barrier to competition is pending, and if the DBS and broadcasting industries work out their differences, it will be resolved.

Finally, these commenters’ claims that MSO clustering activities and the Commission’s program access and cable inside wiring rules are actually inhibiting, rather than promoting, competition, simply do not ring true in light of the undeniable and explosive growth of competition in the MVPD market. Their advocacy for extending the program access rules to both terrestrially delivered programming and to unaffiliated programming vendors is in reality an effort to turn what Congress intended in 1992 as a government “helping hand” into a permanent and inequitable “fist on the scale.” As these competitors invest billions of dollars into distinguishing themselves from one another and from cable, they are also more than capable of fending for themselves in the competitive programming marketplace. Comcast believes the record facts compiled herein speak for themselves. No additional regulatory or legislative action is either necessary or warranted.

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<sup>91</sup> The assertion that Microsoft’s non-voting interest in Comcast should somehow transform MSNBC into a “vertically integrated” programmer subject to the program access rules is unsupported by the Commission’s rules. *See* Wireless Communications Association International, Inc., Comments in CS Docket No. 99-230 (filed August 6, 1999); 47 C.F.R. § 76.1000(b).

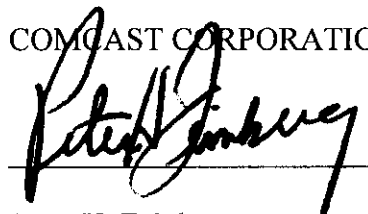
## CONCLUSION

The Commission's next report to Congress is a crucial one because the multichannel video marketplace has become intensely competitive and challenging for both cable operators and other MVPDs over the past year, and has yielded many new benefits and opportunities for consumers. Competition has resulted in the rapid deployment of an advanced communications infrastructure, which has brought consumers more choices in programming and new advanced services. Indeed, 1999 has been a year in which Comcast, in response to competition, has evolved from a traditional cable television operator into a company offering interactive broadband and digital services, with the result that its customers enjoy greater choice at competitive prices. The Commission's pro-competitive approach in a more stable policy environment has borne much fruit. As the record in this proceeding demonstrates, no additional regulatory or legislative action is warranted given the flourishing competitive market for multichannel video programming and other new advanced services.

Respectfully Submitted,

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## CERTIFICATE OF SERVICE

I, Ruby Brown, a secretary at the law firm of Dow, Lohnes & Albertson, PLLC, certify that on this first day of September 1999 I caused the foregoing Reply Comments of Comcast Corporation to be served by first-class mail, except where hand delivery is indicated, on the following:

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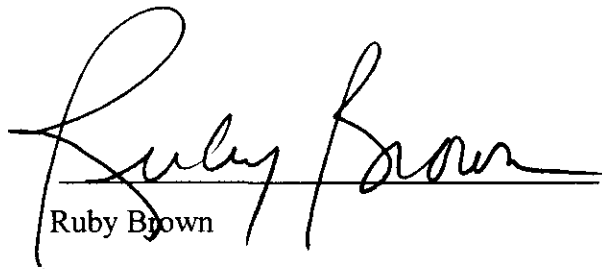
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